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WF Coal Sales, Inc. and United Mine Workers of America, District 17. Case 09–CA–138757

March 30, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that WF Coal Sales, Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge filed on October 14, 2014, by United Mine Workers of America, District 17 (the Union), the General Counsel issued a complaint on December 31, 2014, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On January 28, 2015, the General Counsel filed with the Board a Motion for Default Judgment and a Memorandum in Support of Motion for Default Judgment, with exhibits attached. Thereafter, on January 29, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by January 14, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 22, 2015, notified the Respondent that unless an answer was received by January 27, 2015, a motion for default judgment would be filed.¹ Nevertheless, the Respondent failed to file an answer.

¹ As set forth in the General Counsel's Memorandum in Support of Motion for Default Judgment, on January 26, 2015, counsel for the General Counsel spoke with the Respondent by telephone and reminded the Respondent of its obligation to file an answer by January 27, 2015, but the Respondent did not indicate a willingness to file an answer and did not request an extension of time in which to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Premier, West Virginia, and has been engaged in the mining of coal at the Westchester Mine facility in Hensley, West Virginia.

Annually, the Respondent, in conducting its operations described above, sold and shipped from its Hensley, West Virginia facility goods valued in excess of \$50,000 directly to Alpha Natural Resources, Inc., which operates a coal preparation plant located in the State of West Virginia, and is an enterprise directly engaged in interstate commerce that shipped goods valued in excess of \$50,000 directly to points located outside the State of West Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Edward Brantley	President
Robert Wright	Secretary Treasurer
Tom Woolwine	Labor Consultant

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by Respondent at its Route 7, Hensley, West Virginia, Westchester Mine facility, but excluding all contract employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

Since about April 14, 2014, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then, the

Union has been recognized as the representative by the Respondent. This recognition has been embodied in a Memorandum of Understanding, which is dated April 14, 2014.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive bargaining representative of the unit.

At various times from about May 1 through June 18, 2014, the Respondent and the Union met for the purpose of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

Following the period described above, the Respondent refused to meet at reasonable times and places for bargaining by failing to appear for a July 7, 2014 bargaining session; by failing to offer future dates of its availability for bargaining meetings or by failing to respond to the Union's proposed dates; and by failing to meet with the Union to negotiate a collective-bargaining agreement.

By its overall conduct, including the conduct described above, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to meet at reasonable times and places for bargaining by failing to appear for a July 7, 2014 bargaining session; by failing to offer future dates of its availability for bargaining meetings or by failing to respond to the Union's proposed dates; and by failing to meet with the Union to negotiate a collective-bargaining agreement, we shall order the Respondent to meet and bargain with the Union, on request, as the exclusive collective-bargaining representative of the employees in the unit and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, WF Coal Sales, Inc., Premier, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with United Mine Workers of America, District 17 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by Respondent at its Route 7, Hensley, West Virginia, Westchester Mine facility, but excluding all contract employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain in good faith with United Mine Workers of America, District 17 as the exclusive collective-bargaining representative of the employees in the unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Premier, West Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 18, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 30, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with United Mine Workers of America, District 17 as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time production and maintenance employees employed by us at our Route 7, Hensley, West Virginia, Westchester Mine facility, but excluding all contract employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, meet and bargain in good faith with United Mine Workers of America, District 17 as the exclusive collective-bargaining representative of the employees in the unit concerning terms and conditions of employment, and WE WILL put in writing and sign any agreement reached.

WF COAL SALES, INC.

The Board's decision can be found at www.nlrb.gov/case/09-CA-138757 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

